1942.

File No. O. Prisons/42

Legal **DEPARTMENT**

A **BRANCH**

K

1715

Subject:—

Opinions under the

Prisons Act, 1894

P-6

File No. O Prisons/42

Std. Sectt. Slip 24 B a.

216-A

C O N T E N T S.

Legal Department File O. Prisons / 1942

Sr. No.	Compilation No.	Subject	Pages
1.	O.No. 1301 dt. 12-8-42	Bombay Jail Manual Rule 56---- Whether the penalty of fine can be inflicted on any subordinate of the Govt. Deptt. under the above rule and whether the rules contained in the manual are statutory rules.	1-6

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Submitted.

2. Please see H.D. office note at pages 3-4 ante and para. 2 of R.L.A's opinion No. 8830, dated 26-10-1938. Under the proviso to rule 33 of the B.C.S. Conduct Discipline and Appeal Rules, except in cases where provision is made in a statute the penalty of fine cannot be inflicted on members of the subordinate service of the Jail Department (other than menials and inferior ~~xxxxxxxx~~ servants) as were in service on 27-5-1930. But H.D. is of the view that since the R.L.A. has held in the opinion referred to above that the rules contained in the Jail Manual are ~~xxxxxxx~~ statutory rules, the penalty of fine can be inflicted on any subordinate of the Jail Department, under rule 86 of the Bombay Jail Manual Part I, irrespective of the fact whether he was in service on 27th May 1930, or not; and that it is unnecessary to reproduce in rule 116 of the Jail Manual, the proviso to rule 33 of the B.C.S.C.D. and A. Rules, the R.L.A. is requested to advise whether this view is correct.

3. Rule 33 of the B.C.S.C.D. and Appeal Rules provides that <u>without prejudice to the provisions of any law for ~~xx~~ the time being in force</u>, the penalties prescribed therein, for good and sufficient reasons, be imposed upon any member of the subordinate services other than the subordinate public service. The penalty of fine is mentioned as one of the punishments

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under the rule. The proviso to this rule says that except in cases where provision is made in a statute, the penalty of fine shall not be inflicted o n members of the Subordinate Services (other than manials and inferior servants) as were in service on 27th May 1930. Ordinarily, therefore, a member of the subordinate Jail Service, who was in service before 27th May 1930 could not have been penalised with a fine had there been no separate statutory provision made elsewhere, But since A.L.A. has held in para. 2 of his Opinion No. 7830, dated 26th October 1938 that the rules contained in the Bombay Jail Manual are statutory rules, rule 86 will govern the case of a member of the Subordinate Service of the Jail Department, overriding rule 33 of the B.C.S. Conduct Discipline Appeal Rules. This would mean that punishment of fine can be inflicted on any subordinate in the Jail Department irrespective of whether he was in service on 27th May 1930 or not It is therefore unnecessary to reproduce in rule 116 of the Jail Manual, the proviso to Rule 33 of the Bombay Civil Services Conduct Discipline and Appeal Rules. The view taken in para. 1 of A.D. office note, dated 9th December 1941 at p. 3 ante, is correct.

Sd/- P.S. Nadkarni
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S.A.S. In his opinion No. 2680, dated the 9th March 1939, the A.L.A. has opined:-

"Section 60(c) of the Prisons Act, 1894,

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before its amendment by the Adaptation of Indian Laws order in Council gave power to a local Government to make rules for the government of prisons and for the appointment, guidance, control, punishment and dismissal of all officers appointed under this Act. It is possible therefore that the provisions in rule 86 of the rules in the Bombay Jail Manual could have been made by a rule under section 60(c) of the Prisons Act. The H.D. as well the Inspector General of Prisons are unable to state whether rule 86 was issued in exercise of the powers of the Government of Bombay under section 60. Even assuming it was so issued, section 60(c) has been ~~xxxxxxx~~ deleted by the Adaptation of Laws Order in council as being inconsistent with section 241(2) of the Government of India Act, 1935. In the adapted section 59 a provision similar to the one contained in sub-section (c) of section 60 does not appear. Until other provision is made under the new Government of India Act, the provision in rule 86 of the Jail Manual would be in force under paragraph 15(2) of the Government of India (Commencement and Transitory Provisions) Order, 1936. It does not appear any rules are made under section 241(2) of the Government of India Act for the conditions of service including the Discipline and Conduct of Government servants. The Bombay Civil Services (conduct and Discipline) Rules made ~~xx~~ under the Classification Rules are in force under section 276 of the Government of

India Act. Until therefore new rules are made under section 241(2) of the Government of India Act, rule 86 in the Jail Manual will continue to apply to such cases."

It follows therefore that rule 86 of the Jail Manual is a statutory provision. That being so, the proviso to rule 33 of the Bombay Civil services (classification, Discipline and Appeal) Rules applies and a fine can be inflicted on any member of the subordinate Jail service only under Rule 86 of the Jail Manual and not under rule 33 of the Bombay civil services (C., D. and A.) Rules. Rule 86 of the Jail Manual is a special ~~xxxxxxxxxx~~ statutory provision and the proviso rule 33 of the Bombay civil services (C.,D and A.) Rules excludes such statutory provision from its purview and does not restrict its operation. Consequently it was not necessary to reproduce the proviso to rule 33 of the Bombay Civil Services (C., D and A.) rules in rule 116 of the Jail Manual. The view expressed in the H.D. office note at p. 3 ante is correct.

Sd/- R.T.K
19-1

D.S. I agree . But as held in S. L.A.'s opinions No. 7830 dated 26-10-1938 and No. 2680 dated 9-3-1939, Rule 86 in the Jail manual would continue to have statutory force until rules are made under sec.241(2) of the Govt. of India Act, 1935. Consequently the special provisions of that rule will override the restriction imposed by the proviso to B.C.S.(C.D.& Appeal) Rules. The view taken by H.D.in para 1 at p.3 ante is ~~Berfore~~ therefore correct.

sd/-
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S.A.R.

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R.L.A.'s Office

~~Office of the R.L.A.~~

Rule 33 of the Bombay Civil Services (Conduct, Discipline and Appeal) Rules provides that without prejudice to the provisions of any law for the time being in force the penalties prescribed therein, for good and sufficient reasons, be imposed upon any member of the subordinate service other than the ~~subordinate~~ public service; The penalty of fine is menticned as one of the punishments under the rule. The proviso to this rule says that except in cases where provision is made in a statute, the penalty of fine shall not be inflicted on members of the subordinate services (other than menials and inferior servants) as were in service on 27th May 1930. Ordinarily, therefore, a member of the subordinate Jail service, who was in service before 27th May 1930 could not have been penalised with a fine had there been no separate statuory provision made elsewhere. But as held in R.L.A's opinions No. 7830, dated the 26th october 1938 and No. 2680, dated the 9th March 1939, Rule 86 in the Jail Manual would continue to have statutory force until rules are made under section 241(2) of the Government of India Act, 1935.. Consequently the special probisions of that rule will override the restriction imposed by the proviso to Bombay Civil Services (conduct, Dispipline and Appeal) Rules. The view taken by the Home Deptt, in paragraph 1 at p. 3 ante, is therefore correct..

~~D.C.~~ P.N.M.

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Remembrancer of Legal Affairs,

U.R. to H.D., No. 1301, dated The 12th Feb. 1942.

S.A.K.

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